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ESSAY

'Informal Brief Exchange'

By William Safire

WASHINGTON — Ben Civiletti is a good soldier. When his President fired an honest prosecutor at the behest of a corrupt Congressman under investigation, it was Civiletti who smothered an obstruction-of-justice probe; when the Bert Lance case required prompt action to lead to successful prosecution, it was Civiletti who allowed Justice's feet to be dragged for three years; when the Koreagate probe threatened a dozen senior Democrats in Congress, it was politically trustworthy Ben Civiletti who contained the situation and saved the day for Tip O'Neill. He earned the job of Attorney General.

So it should come as no surprise that this good soldier would willfully wait until others in a meeting with the President had left the Oval Office. Then, safely alone with Jimmy Carter — in what Civiletti called an "informal brief exchange," his euphemism for law-breaking that rivals "modified limited hangout" and "third-rate burglary" — tell him succinctly what he had to do to keep his brother out of jail.

How was a poor Attorney General to know that Jimmy Carter was afflicted with a compulsion to make notes as bad as Nixon's need for a taping system? Had it not been for the demands of Congress that transformed that damning note into undestroyable evidence, the quick-and-dirty dealing that White House and Justice officials had been self-righteously denying could have remained a secret between the two men.

Only the day before confessing the "exchange," which he refuses to construe as an improper "discussion," Good Soldier Civiletti had publicly given his President, the First Lady, the National Security Advisor and the Appointments Secretary a unique legal defense against whatever charges might arise out of their tipping off a suspect about incriminating evidence in possession of the Justice Department.

Since the goal of the Foreign Agents Registration Act is to disclose the actions and pay of foreign agents, went this ingenious reasoning, no action to advance that glorious cause could be considered an obstruction of justice — not even actions, one presumes, that ordinarily would trigger the appoint-

ment of a special prosecutor. Escape-hatch-22.

But in return for his loyalty in putting the law through hoops to protect the White House, the Attorney General has been entrapped by his client's mindless urge to note in writing what was intended to be "informal" — which means, in legalese, without embarrassing memoranda. Even so, in the gutsy John Mitchell tradition, Ben Civiletti has offered to absolve his boss and take the blame: his belated account makes the President's intrusion into his own brother's case seem almost passive. Some honor still attaches to being a good team player; I have grown fond of "Baltimore Ben," who has been unfailingly polite to his long-time Javert, and hope he gets out of this with no more than guilty plea to a misdemeanor. In private practice, though not in public service, he's my kind of lawyer.

The first test for the Senate Billygate Committee will be in the majority's reaction to Senator Bob Dole's call for an attorney "with impeccable credentials" to serve as chief counsel.

If Senator Bayh accepts the idea of topflight outside counsel, accompanied by the selection of a chief investigator of the calibre of Stanley Sporkin of the S.E.C., we will have a legitimate inquiry; if the aw-shucks Bayh tries to hog the publicity to himself, we will have a two-ring circus. The committee needs sober advice: talk of "requiring" the President to appear in person is an offense to the Constitution.

The Committee should examine the flow of information to the White House from Justice, through the law firm recommended to Billy Carter by White House Counsel Lloyd Cutler. Stephen Pollok writes me that he is "certain that I did not say that the case had been referred to me by the White House" but he does not speak for later conversations by his partner, who will not answer calls.

Meanwhile, the committee should find out why the information on Libyan influence developed by a New York grand jury was never examined by Justice in Washington, as urged in this space last Sept. 30. Democratic Chairman John White's meeting with the Libyan Ambassador was filmed by the F.B.I. and was followed by a call to the Deputy Secretary of State that Warren Christopher cannot seem to recall. In addition, the intelligence intercept of the Libyans' report of the Nov. 27 Brzezinski "assurances" deserves careful perusal for the quality of influence Billy Carter sold.

Let's not go for blood. If the "informal brief exchange" in the Oval Office leading to a tip-off and a no-penalty deal for a lawbreaker is not seen as an obstruction of justice, and if the week-long lying by the I'll-never-lie-to-you White House and Attorney General is not seen as a coverup — then the Congress, the courts and the press will have ratified the pardon of Nixon.